

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6136-9]

RIN 2060-ZA04

**Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program from the
Phoenix, Arizona Serious Ozone Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In today's final action, EPA is announcing its approval of the petition by the Governor of Arizona to opt-out of the federal RFG program and remove the requirement to sell federal RFG in the Phoenix serious ozone nonattainment area as of June 10, 1998. EPA's regulations establish the procedures and criteria for opting out of the RFG program, and provide that if a state relies on the federal RFG program as a control measure in its State Implementation Plan (SIP), the state must revise the SIP to reflect the opt-out from RFG. EPA regulations also provide that the effective date of the opt-out shall be no less than 90 days from EPA's approval of such a SIP revision. Arizona replaced federal RFG with a state cleaner burning gasoline program which EPA approved into Arizona's SIP effective March 12, 1998. Under 40 CFR 80.72, the effective date of the opt out is 90 days after EPA approves such a SIP revision, which in this case is June 10, 1998. As of June 10, 1998, Arizona's clean fuel state regulations will go into effect in the Phoenix area. Arizona developed a clean fuel program to reduce emissions of volatile organic compounds (VOC) and particulates (PM10). Thus, although opting out of the federal RFG program, the Phoenix area will continue to enjoy the air quality benefits of a clean

burning gasoline. In accordance with the approval of the opt-out petition and the determination of the opt-out effective date, EPA is, in a separate action published elsewhere in this issue of the Federal Register, amending section 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998.

DATES: The effective date for removal of the Phoenix, Arizona area from the federal RFG program is June 10, 1998.

ADDRESSES: Materials relevant to this notice to remove the federal RFG program from the Phoenix area may be found in Docket A-98-23, the docket for the rulemaking to amend section 80.72 of the RFG regulations. In addition, materials relevant to the rulemaking to opt-in Phoenix to the federal RFG program may be found in Docket A-97-02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M-1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to the EPA Final Rule to approve the Arizona SIP revision establishing state clean burning gasoline regulations are available in the docket located at Region IX. The docket is located at 75 Hawthorne Street, AIR-2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00 - 4:00 p.m. A reasonable fee may be charged for copying docket material. This approval action is not being addressed in this notice.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney-Advisor, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J),

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SUPPLEMENTARY INFORMATION

Availability on the TTNBBS

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I. Background

A. Opt-out Procedures

Section 80.72 of the RFG regulations (Opt-out Rule) provides the process and criteria for a reasonable transition out of the RFG program if a state decides to opt-out.¹ The procedures for

¹ Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

opting out are geared towards achieving a reasonable transition out of the RFG program for industry and states. The Opt-out Rule provides that the Governor of the state must submit a petition to the Administrator requesting to opt out of the RFG program. The petition must include specific information on how, if at all, the state has relied on RFG in a pending or approved SIP and, if RFG is in an approved SIP, how the SIP will be revised to reflect the state's opt-out from RFG. The Opt-out Rule also provides that EPA will notify the state in writing of the Agency's action on the petition and the date the opt-out becomes effective when the petition is approved. The regulations also provide that EPA will publish an FR notice announcing the approval of any opt-out petition and the effective date of such opt-out.

The effective date of the opt-out is dependent on how the RFG program is used by a state in its SIP. Opt-out petitions received prior to December 31, 1997 become effective 90 days (or later if requested) from the date EPA provides written notification to the state that the petition has been approved. If, however, the state included RFG as a control measure in an approved SIP, the state must revise the SIP to remove federal RFG as a control measure before the opt-out can be effective. For the latter case, the opt-out becomes effective no less than 90 days (or later if requested) after the Agency approves a revision to the state plan replacing RFG with another control. Opt-out petitions received after December 31, 1997 are treated differently. See 62 FR 54552 (October 20, 1997).

EPA determined in the Opt-out Rule that it would not be necessary to conduct a separate rulemaking for each future opt-out request. 61 FR 35673 at 35675 (July 8, 1996). EPA established a petition process to address, on a case-by-case basis, future individual state requests to opt-out of the federal RFG program. These regulations establish clear and objective criteria

for EPA to apply. These regulatory criteria address when a state's petition is complete and the appropriate transition time for opting out. As EPA stated in the preamble to the Opt-out Rule, this application of regulatory criteria on a case-by-case basis to individual opt-out requests does not require notice and comment rulemaking, either under section 307(d) of the Act or the Administrative Procedure Act. Thus, in this action, EPA is applying the criteria provided in the Opt-out Rule to approve the Arizona petition.

B. Arizona Opt-in and Opt-out of RFG for the Phoenix Area

By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal RFG program.² The Governor requested an implementation date of June 1, 1997. Pursuant to the Governor's letter and the provisions of section 211(k)(6) of the Clean Air Act, and after holding a public hearing in Phoenix on March 18, 1997, EPA adopted regulations on May 28, 1997, that applied the requirement to sell RFG to the Phoenix area. 62 FR 30260 (June 3, 1997)³

Arizona subsequently enacted legislation which authorized the establishment of a State cleaner burning gasoline program which would become effective June 1, 1998. By letter dated September 12, 1997, the Governor of the State of Arizona applied to EPA to opt-out of the federal RFG program for the Phoenix area. The Governor requested the specific opt-out effective date of June 1, 1998, to ensure that the federal RFG program would be maintained in the Phoenix area until the State RFG regulations became effective. Thus, the Governor requested

² EPA reclassified the Phoenix area from moderate to serious nonattainment for ozone on November 6, 1997 (62 FR 60001).

³ See Notice of Proposed Rulemaking at 62 FR 7197 (February 18, 1997); and Notice of public hearing at 62 FR 11405 (March 12, 1997).

that EPA approve the State's opt-out petition and set the opt-out effective date only upon EPA approval of the SIP revision containing the Arizona RFG regulations and the waiver request.

EPA's Office of Air and Radiation (OAR) responded to the Governor's petition by letter dated October 3, 1997. EPA stated in the letter that the Governor's petition provided the information required by the Opt-out Rule and that OAR would work with EPA Region IX to process the SIP revision as quickly as possible in order to provide the opt-out effective date requested.

II. Action

In this notice, EPA is in a separate action published elsewhere in the Federal Register, notifying the public that it has applied the criteria provided in the Opt-out Rule (40 CFR 80.72) and is approving the petition submitted by the Governor of Arizona to determine that June 10, 1998 is the effective date for opt-out of the federal RFG program for the Phoenix area. EPA is in a separate action amending section 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998.

First, EPA is approving the Governor's petition because it provided the information required by the Opt-out Rule. Second, EPA is determining the opt-out effective date by applying the criteria in 40 CFR 80.72. As discussed in section I.A.above, the Opt-Out Rule requires that if a state included RFG as a control measure in an approved SIP, the state must revise the SIP, reflecting the removal of federal RFG as a control measure before an opt-out can be effective. The Governor's petition stated that Arizona adopted an interim rule for a State clean fuel program which would replace the federal RFG program as a control measure in its SIP. In September 1997, the State submitted to EPA's Region IX office a SIP revision that included its

clean fuel program and a request for a waiver of federal preemption of state fuel standards under section 211(c)(4)(C) of the Act. Arizona's SIP revision provided data to show that its clean fuel program would provide the same or more VOC and PM reductions that it realized from federal RFG.

EPA's Region IX office published a proposed approval of the SIP revision on November 20, 1997 (62 FR 61942) and a final approval of the SIP revision on February 10, 1998. (63 FR 6653) The effective date for the final approval of the SIP revision was March 12, 1998. The Opt-out Rule provides that the opt-out effective date shall be no less than 90 days from the EPA SIP approval effective date. Thus, the opt-out effective date for the Phoenix area will be June 10, 1998, 90 days from March 12, 1998.

Thus, EPA is today notifying the public that it has applied its regulatory criteria to make the following determinations. EPA is approving the petition by the Governor of Arizona to opt-out of the federal reformulated gasoline (RFG) program for the Phoenix area and removing the requirement to sell federal RFG in the Phoenix serious ozone nonattainment area as of June 10, 1998. This opt-out effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. Pursuant to these determinations, EPA is also, in a separate action published elsewhere in this Federal Register, amending section 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998.

Date:

Signed:

Carol M. Browner

Administrator